

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 40 of Title 17 (Business, Occupations & Professions) (May 1990). The purpose of the amendments is to simplify and expedite the application process by eliminating the requirement that an application for licensure, registration, renewal or reinstatement is attested to before a notary public. Notice of Proposed Rulemaking was published in the D.C. Register on December 26, 2003 at 50 DCR 11080. No comments were received concerning these rules and no changes have been made since publication as a Notice of Proposed Rulemaking. These final rules will be effective upon publication of this notice in the D.C. Register.

Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations & Professions) (May 1990) is amended to read as follows:

The section heading for 4001 is amended to read as follows:

**4001 APPLICATION FOR A LICENSE, REGISTRATION, RENEWAL,
 OR REINSTATEMENT**

Section 4001.1 is amended to read as follows:

4001.1 An applicant for a license, registration, renewal, or reinstatement shall do the following:

- (a) Submit a completed application on the prescribed form;
- (b) Submit with the application two (2) recent passport-type photographs measuring two inches by two inches (2"x2") which clearly exposes the area from the top of the forehead to the bottom of the chin;
- (c) Pay the required fees(s);
- (d) Submit all required supporting documents, with the completed application, including transcripts, character and employment references, certified or validated test scores, and, if applicable, certified proof of licensure in other jurisdictions, except as provided in § 4001.1(e); and

109.31-

109.39 [Reserved.]

109.40 Special "Opt-Out" Rule for Qualified High Technology Company (QHTC): A corporation that qualifies under D.C. Official Code § 47-1817.01.(5)(A) as a QHTC may elect to join in the filing of a consolidated tax return with its affiliated group. By electing to join in the filing of a consolidated return, the corporation that would otherwise qualify as a QHTC shall be deemed to opt-out of QHTC status on a permanent basis. Such corporation and its affiliated group shall, by joining in the filing of a consolidated return, be permanently estopped from qualifying for tax benefits under D.C. Official Code §47-1817.

109.41-

109.99 [Reserved.]

- (e) Arrange for the required transcript, certificate of graduation, test results, certification or proof of licensure to be sent directly to the Board from the educational institution, testing service, professional association or government agency if the education institution, testing service, association or agency will not provide these documents to the applicant.

Calculation of Corporation B's share of Tax Year 2001 Consolidated Loss:

A = \$(80,000) for Corporation B

B = \$(120,000) for Corporation B and Corporation C

C = \$(20,000) for consolidated loss

$(\$80,000/\$120,000) \times \$20,000 = \$13,333$ loss assigned to Corporation B

Calculation of Corporation C's share of Tax Year 2001 Consolidated Loss:

A = \$(40,000) for Corporation B

B = \$(120,000) for Corporation B and Corporation C

C = \$(20,000) for consolidated loss

$(\$40,000/\$120,000) \times \$20,000 = \$6,667$ loss assigned to Corporation C.

For taxable year 2002, Corporation D, Corporation B and Corporation C have taxable income before NOL deduction of \$80,000, \$60,000, and \$4,500, respectively. In this situation, Corporation B will utilize all of its \$13,333 of D.C.-apportioned net operating loss carryforward from 2001, but Corporation C will utilize only \$4,500 of its \$6,667 D.C.-apportioned net operating loss carryforward from 2001 to the extent of its 2002 taxable income of \$4,500.

The DBC consolidated group has a consolidated loss of \$17,833 for the tax year 2002.

<u>Tax Year 2002</u>	<u>Corporation D</u>	<u>Corporation B</u>	<u>Corporation C</u>	<u>Consolidated Income</u>
Taxable Income before apportioned NOL deduction	\$80,000	\$60,000	\$4,500	\$144,500
Less apportioned NOL deduction		(13,333)	(4,500)	<u>(17,833)</u>
Total taxable income				<u>\$126,667</u>
Carryover to 2003			<u>(\$2,167)</u>	

- (h) A surviving corporation in a merger is permitted to use District of Columbia net operating losses and District of Columbia apportioned net operating losses of a merged corporation, provided that the surviving corporation for federal tax purposes is permitted to use the federal net operating losses, if any, of the merged corporation. IRC §§ 381 and 382 apply with respect to the allowable loss.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 927 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Attendant Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for attendant care services provided by qualified professionals to participants with mental retardation in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for attendant care services.

These rules amend the previously published rules by adding a section to limit the number of hours a client may receive attendant care services during a one year period to ensure that total expenditures for all home and community-based services and other Medicaid services under the Waiver do not exceed the amount that would be incurred by the State's Medicaid program for these individuals in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on December 5, 2003 (50 DCR 10437). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 927 (Attendant Care Services) to read as follows:

SECTION 927**ATTENDANT CARE SERVICES**

- 927.1 Attendant care services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 927.2 Attendant care services shall consist of hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically handicapped individual. Supportive services are those services which substitute for the absence, loss, diminution, or impairment of physical or cognitive function.

<u>Tax Year</u> <u>2002</u>	<u>Corporation</u> <u>M</u>	<u>Corporation</u> <u>N</u>	<u>Consolidated</u> <u>Income</u>
Total taxable income before apportioned NOL deduction	\$50,000	(\$20,000)	\$ 30,000
Less apportioned NOL deduction			(30,000)
Total taxable income			<u>\$ -0-</u>
Consolidated net operating loss carry forward to 2003 and beyond			<u>(\$20,000)</u>

(f) The Separate Return Limitation Year (SRLY) provisions of IRC §172 and IRC §1502, and the federal income tax regulations thereunder, shall apply in those cases where a member of a District of Columbia affiliated group which has a D.C.-apportioned net operating loss carryforward leaves the group and either files a separate District of Columbia franchise tax return or joins in the filing of a consolidated return with a different District of Columbia affiliated group. The prorated amount assigned to each member who incurred the loss is determined by the following formula:

$$(A/B) \times C = D$$

A/B = Ratio based on one corporation's loss to total corporation losses

C = Consolidated net operating loss

D = Prorated amount of consolidated net operating loss assigned to the member.

(g) The following is an example of the application of § 109.30(f):

In 2001 Corporations B and C were members of a District of Columbia affiliated group which had Corporation A as the common parent. On January 1, 2002 Corporation B and Corporation C became members of a different District of Columbia affiliated group the common parent of which was Corporation D.

The ABC consolidated group had a consolidated loss of \$20,000 for tax year 2001.

<u>Tax</u> <u>Year 2001</u>	<u>Corporation</u> <u>A</u>	<u>Corporation</u> <u>B</u>	<u>Corporation</u> <u>C</u>	<u>Consolidated</u> <u>Income</u>
Taxable Income	\$100,000	\$(80,000)	\$(40,000)	\$(20,000)

- 927.3 Attendant care services eligible for reimbursement include, but are not limited to the following services:
- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding and bowel and bladder care;
 - (b) Household services including assistance with meal preparation, shopping, cleaning and laundry which are incidental to the performance of care;
 - (c) Cognitive services including assistance with money management, use of medications, and cueing with adaptive living skills;
 - (d) Mobility services including escort and transporting the client; and
 - (e) Health-related tasks including those medical tasks that can be performed by an unlicensed person or delegated to an unlicensed person by a licensed health professional to the extent permitted by State law.
- 927.4 Attendant care services eligible for reimbursement may be provided in the following settings:
- (a) An individual's home;
 - (b) A foster home;
 - (c) A supervised apartment;
 - (d) A non-institutional place of residence other than as described in (a) through (c) of this section as permitted by District law.
- 927.5 Attendant care services are not reimbursable when anyone else in the household is capable of performing these services.
- 927.6 Attendant care services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 926.7 Each person providing attendant care services shall be supervised by one of the following:
- (a) A registered nurse subject to the requirements set forth in section 927.8;
 - (b) The client subject to the requirements set forth in section 927.9; or
 - (c) The client's case manager.
- 927.8 The frequency and intensity of supervision by the registered nurse shall be specified in the client's written plan of care.

- (1) such member filed a separate District of Columbia franchise tax return for years 2000 and thereafter, or
- (2) such member was included in a different District of Columbia affiliated group for years 2001 and thereafter.

(c) The following is an example of the application of § 109.30(b):

Corporation A files a return on separate company basis for tax year 2000 and has a D.C.-apportioned net operating loss of \$50,000 to be carried forward to subsequent years. For taxable year 2001, Corporation A joins with Corporation B to file a consolidated return. Corporation A utilizes only \$30,000 of its \$50,000 D.C.-apportioned net operating loss from taxable year 2000 to the extent of its total taxable income of \$30,000 for taxable year 2001.

<u>Tax Year</u> <u>2001</u>	<u>Corporation</u> <u>A</u>	<u>Corporation</u> <u>B</u>	<u>Consolidated</u> <u>Income</u>
Total taxable income before apportioned NOL deduction	\$30,000	\$80,000	\$110,000
Less apportioned NOL deduction	<u>(30,000)</u>		<u>(30,000)</u>
Total taxable income			<u>\$ 80,000</u>
Carryover to 2002	<u>(\$20,000)</u>		

- (d) If the District of Columbia affiliated group has a consolidated net operating loss carry forward from prior taxable years, the consolidated net operating loss of that District of Columbia affiliated group shall be carried forward and utilized by such District of Columbia affiliated group to the extent that such District of Columbia affiliated group has apportioned District of Columbia taxable income in future years.

(e) The following is an example of the application of § 109.30(d):

<u>Tax Year</u> <u>2001</u>	<u>Corporation</u> <u>M</u>	<u>Corporation</u> <u>N</u>	<u>Consolidated</u> <u>Income</u>
Total taxable income before apportioned NOL deduction	\$30,000	(\$80,000)	(\$ 50,000)

- 927.9 If consumer directed care, supervision may be furnished by the client when the client has been trained to perform this function and when the safety and efficacy of consumer-provided supervision has been certified in writing by a registered nurse. The certification by the registered nurse shall be based on direct observation of the client and the specific attendant care provider, during the actual provision of care. Documentation of the certification shall be maintained in the client individual plan of care.
- 927.10 Each provider of attendant care services shall:
- (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for attendant care services under the Waiver;
 - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that each person providing attendant care services is qualified and properly supervised;
 - (e) Be available twenty-four (24) hours a day, seven (7) days a week;
 - (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
 - (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030.
- 927.11 Each person providing attendant care services for a provider under section 927.10 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the client;
 - (c) Be certified in cardiopulmonary resuscitation (CPR) and thereafter obtain CPR certification annually;
 - (d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
 - (e) Have the ability to communicate with the client;
 - (f) Be able to read and write the English language;
 - (g) Have a high school diploma or general equivalency development (GED) certificate;
 - (h) Be able to recognize an emergency and be knowledgeable about emergency procedures;

- (1) Separate accounting;
 - (2) The exclusion of any one or more of the factors;
 - (3) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the District; or
 - (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (h) The amounts of the property, payroll, and sales of a partnership are attributable to the partners or members of the joint venture. A corporation that is a partner in a partnership must add its share of the property, payroll, and sales to its own apportionment factors, regardless of whether the partnerships are District of Columbia partnerships. The affiliated group should include a separate schedule to show the distribution to each partner.
- (i) Apportionment factors are subject to the adjustments set out in §109.10, if necessary to clearly reflect income or to prevent the evasion of tax.

109.21-

109.29 [Reserved]

109.30 In computing the net income of the consolidated group, there shall be allowed a deduction for the consolidated net operating loss, in the same manner as allowed under IRC §§ 172 and 1502 and the federal income tax regulations thereunder and D.C. Official Code Section 47-1803.03(a)(14).

- (a) Since an affiliated group filing a District consolidated return often does not include all the members included in the federal return, the net operating loss deduction is limited to the amount of deduction that would otherwise be allowed for federal income tax purposes had the federal return been filed including only the District of Columbia entities for the tax year involved. The federal consolidated return must be adjusted to reflect only District-source losses.
- (b) Each member of a District of Columbia affiliated group shall have its own net operating loss deduction (before apportionment) for loss years prior to 2000 and D.C. apportioned net operating loss deduction (after apportionment) for loss years 2000 and thereafter where:

- (i) Agree to carry out the responsibilities to provide attendant care services consistent with the client's IHP or ISP;
- (j) Complete pre-service and in-service training approved by MRDDA;
- (k) Prior to employment complete a forty (40) hour training including training on body mechanics, which is consistent with the training guidelines for Level 1 Home Care workers established by the National Home Caring Council; and
- (l) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 et seq.).

927.12 A family member other than a spouse or parent of a minor recipient may provide attendant care services. Each family member providing attendant care services shall meet all the requirements set forth in sections 927.10 and 927.11 of these rules.

927.13 Each provider shall notify the client's case manager and the client or client's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. The seven (7) day written notice shall not be required and oral notice may be given, if the discharge is the result of:

- (a) A medical emergency;
- (b) A physician's order to admit the client to an inpatient facility;
- (c) A determination by the provider that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
- (d) A determination by the ISP or IHP team that the condition that necessitated the provision of services no longer exists.

927.14 If the client seeks to change providers, the provider shall assist the client in selecting a new provider and cannot abandon the client until the transfer has been successfully completed.

927.15 Each provider shall develop contingency staffing plans to provide coverage for each client in the event the assigned attendant care aide cannot provide the services or is terminated.

927.16 The billable unit of service for attendant care services shall be one hour.

927.17 The reimbursement rate for attendant care services shall be \$13.50 per hour.

109.11-

109.19 [Reserved.]

109.20 The three-factor apportionment requirements of D.C. Official Code §47-1810.02(d) shall be taken into account by an affiliated group doing business within and without the District of Columbia. All members of an affiliated group which join in the filing of a District consolidated tax return shall be considered as one "person" to determine the portion of the consolidated net income earned within and without the District by the same method prescribed in the statute cited above. All intercompany transactions shall be eliminated in the determination of the apportionment factors.

- (a) A single consolidated apportionment factor is constructed for the affiliated group. The property, payroll, and sales factors include the property, payroll, and sales for all members of the consolidated group. The consolidated apportionment factor constructed is then multiplied by the consolidated adjusted federal income to determine the adjusted federal income apportioned to the District of Columbia.
- (b) The members of the affiliated group may not determine separate apportionment factors to apply to their portion of the consolidated adjusted federal income.
- (c) The District property factor for the consolidated group shall be determined pursuant to D.C. Official Code §47-1810.02(e) and 9 DCMR §§ 125 and 126.
- (d) The District payroll factor for the consolidated group shall be determined pursuant to D.C. Official Code §47-1810.02(f) and 9 DCMR §§125 and 127.
- (e) The District sales factor for the consolidated group shall be determined pursuant to D.C. Official Code §47-1810.02(g) and 9 DCMR §§ 125 and 128.
- (f) Where all members of the consolidated group are subject to a special apportionment formula provided by D.C. Official Code §47-1810.02(h), and approved by the Office of Tax and Revenue, the consolidated group will determine a single consolidated apportionment factor using the special formula. Where all members of the affiliated group are not subject to the identical special formula approved by the Office of Tax and Revenue, the special formula is not available to the affiliated group.
- (g) Under D.C. Official Code §47-1810.02(h), the following alternative methods may be requested or prescribed in respect to all or a part of taxpayer's business activity where necessary to fairly represent the extent of taxpayer's business activity in the District:

927.18 Attendant care services shall be limited to 1040 hours per client during any one (1) year period, which shall commence on the date that services are authorized.

927.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed.

Activities of Daily Living-The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Client-An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease- Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family- Any person related to the client by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP)- The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Provider-Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1202 et seq.) or licensed as a registered nurse in the jurisdiction where the services are provided.

Supervised Apartment- A living arrangement for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

- (b) Supporting schedules shall be filed with the District of Columbia consolidated tax return for each member. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain a columnar form of reconciliation of retained earnings for each corporation, together with a reconciliation of consolidated retained earnings. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the District consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated District taxable income for the return period.

109.8 Federal Taxable Income is computed as if a consolidated federal corporate income tax return was filed that included all Affiliates. Federal Treasury regulations under 26 Code of Federal Regulations §1.1502 *et seq.* and interpretations thereof regarding intercompany transactions apply in determining the federal taxable income of a District consolidated group.

109.9 ALLOCABLE INCOME [Reserved]

109.10 The following adjustments may be made under these regulations:

- (a) Nothing herein shall prevent the exercise of authority under D.C. Official Code § 47-1810.03 to distribute, apportion, or allocate income or deductions between or among corporations where such action is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such corporation. OTR also has the authority to determine whether such method should be followed on a consistent basis, from year to year.
- (b) The District may require that a consolidated return be filed under D.C. Official Code § 47-1805.02(D)(5)(C)(iv) for an affiliated group that is eligible but where an election to file a consolidated return has not been filed if the District determines that a consolidated return is necessary to prevent evasion of taxes or to clearly reflect the taxable income that is attributable to the business conducted in the District by the affiliated group.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 993 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for independent habilitation services provided by licensed or supervised professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for independent habilitation services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on November 14, 2003 (50 DCR 9771). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 993, to read as follows:

993 INDEPENDENT HABILITATION SERVICES

- 993.1 The Medicaid Program shall reimburse for independent habilitation services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 993.2 Independent habilitation services provide periodic supports for the client living in his or her own home or within a supervised apartment to enable the client to live independently and participate in community activities.
- 993.3 Independent habilitation services shall include the following activities:
- (a) Training in activities of daily living and independent living skills;
 - (b) Assistance in performing personal care tasks;
 - (c) Training on, and assistance in using community resources;

- (b) The new member joining the District of Columbia affiliated group shall be required to consent to the election to file a District of Columbia Consolidated Corporation Franchise Tax Return. A written consent shall be attached to the District of Columbia consolidated return for the first taxable year in which the new member joins the District of Columbia affiliated group.
- 109.6 The election shall terminate automatically upon the revocation or termination of the federal consolidated election, and the common parent shall notify the Office of Tax and Revenue within thirty (30) days regarding the revocation or termination of the federal consolidated election.
- (a) If the District of Columbia affiliated group wants to revoke the election in a subsequent tax year, the group must request in writing and receive written permission from the Office of Tax and Revenue. The request to discontinue filing a D.C. consolidated return must be made at least ninety (90) days before the due date (including any extension of time for filing) of the return.
- (b) If the request for revocation or termination of District of Columbia consolidated election is denied by the Office of Tax and Revenue, the District of Columbia affiliated group may file a written protest and request a hearing within thirty (30) days from the denial date.
- (c) If a corporation has ceased to be a member of District of Columbia affiliated group and if such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Office of Tax and Revenue may make an assessment and collect the deficiency from the former member.
- 109.7 If the District of Columbia affiliated group files a consolidated return for the first year of filing, it must make payment of estimated tax on a consolidated basis for subsequent years. The District of Columbia affiliated group is treated as a single corporation for purposes of D.C. Official Code 47-1812.14(a) (relating to payment of estimated tax by corporations) and D.C. Official Code 47-1812.14(b) (relating to underpayment of estimated tax by corporations).
- (a) If separate returns are filed by the members of the District of Columbia affiliated group for the taxable year after receiving consent for discontinuance from Office of Tax and Revenue, the amount of any estimated tax payments with respect to a consolidated payment of estimated tax for such year will be credited against the separate tax liabilities of the members in any manner designated by the common parent which is reasonably satisfactory to the Office of Tax and Revenue. For example, the manner of allocation will be satisfactory to the Office of Tax and Revenue if it does not jeopardize the collection of the corporation franchise tax liability from such members.

- (d) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
 - (e) Training in adapting to a community and home environment, including management of financial and personal affairs and awareness of health and safety precautions; and
 - (f) Coordinating transportation to community events.
- 993.4 A client shall be eligible for independent habilitation services if he or she is living in one of the following types of residences:
 - (a) His or her own home;
 - (b) The home of an unpaid caregiver; or
 - (c) A supervised apartment.
- 993.5 Independent habilitation services shall not exceed forty (40) hours when provided to a client residing in an institutional setting prior to his or her transition to a supervised apartment and when authorized in the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 993.6 Independent habilitation services shall be authorized by the client's interdisciplinary team and provided in accordance with each client's IHP or ISP.
- 993.7 The IHP or ISP shall indicate whether the staffing plan requires the participation of a licensed professional to meet the client's individual needs.
- 993.8 A professional who participates in a staffing plan pursuant to section 993.7 shall be licensed to practice his or her profession pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*); or be licensed to practice his or her profession within the jurisdiction where he or she provides the services.
- 993.9 Each provider of independent habilitation services shall:
 - (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (d) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for independent habilitation services under the Waiver;

- (a) If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return. Such consolidated return may not be withdrawn after such last day.
 - (b) The election made by the common parent is effective prospectively and only if accompanied by a written consent to the election signed by each member of the District of Columbia affiliated group. The completed written consent of all members shall be attached to the District of Columbia consolidated return for the taxable year for which the election is made.
 - (c) Election to file a consolidated return is binding to the District of Columbia affiliated group for the first year of election and for subsequent years as long as the District of Columbia affiliated group remains in existence, unless a written request for revocation is submitted to the Office of Tax and Revenue and the Office of Tax and Revenue grants permission to a group to discontinue filing consolidated returns.
 - (d) The making of a District consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under Title 9 of the District of Columbia Municipal Regulations prior to the last day prescribed by law for the filing of such return. The making of a District consolidated return shall be considered as such consent.
 - (e) If an eligible corporation becomes a member of the District of Columbia affiliated group after the beginning of the District of Columbia consolidated return year or ceases to be a member of the District of Columbia affiliated group during the consolidated return year, two tax returns will be due for that taxable year. The District of Columbia consolidated return shall include amounts attributable to such corporation for the part of the year in which it was a member of the District of Columbia affiliated group. A separate return shall be filed and include the amounts attributable to such corporation for the short taxable year when it was not a member of the District of Columbia affiliated group.
- 109.5 In taxable years after the election, any corporation deriving gross income, in any amount, from District of Columbia sources that was not a member of the original federal affiliated group in the year of the election but is a member of the federal affiliated group in the current year shall be required to join the District of Columbia affiliated group.
- (a) The new corporation shall be deemed to have waived any objection to the filing of the District of Columbia consolidated return by its consent, if any, to join in filing a District of Columbia consolidated return by the common parent of the District of Columbia affiliated group.

- (e) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (f) Have a current Human Care Agreement with MRDDA for residential services if independent habilitation services are provided in a supervised apartment;
- (g) Ensure that all independent habilitation services staff are qualified and properly supervised;
- (h) Ensure that the service provided is consistent with the client's IHP or ISP;
- (i) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (j) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations as set forth in 29 CFR 1910.1030;
- (k) Maintain records that support billed services and document in each record the type of activity provided including the date and time the service was rendered;
- (l) Maintain a policy manual which contain the following subjects:
 - (1) Admission and discharge of clients;
 - (2) Operational procedures for client care;
 - (3) Clients rights and responsibilities;
 - (4) Procedures for emergency care, infection control and reporting of unusual incidents;
 - (5) Health and safety issues;
 - (6) Staffing and personnel;
 - (7) Financial and record-keeping requirements; and
 - (8) Quality Assurance.
- (m) Ensure that each supervised apartment comply with the zoning regulations set forth in Title 11 of the District of Columbia Municipal Regulations (DCMR) and the Housing Code set forth in Title 14 DCMR;
- (n) Ensure that each supervised apartment is accessible to public transportation and emergency vehicles;

109.3 Each member of a District of Columbia affiliated group must have gross income in any amount derived from sources within the District of Columbia.

- (a) In the case of a corporation that is a member of the District of Columbia affiliated group for a part of the taxable year, the District of Columbia consolidated return shall include the income of the corporation for only that part of the year that it is a member of the District of Columbia affiliated group. If the new member is an existing D.C. corporation and not a member of another District of Columbia affiliated group, a final short-year separate year return must be filed for the period prior to becoming a member of the affiliated group. If the new member was a member of another District of Columbia affiliated group, its taxable income or loss for the period prior to joining the new District of Columbia affiliated group must be included in the consolidated taxable income of its prior District of Columbia affiliated group. Correspondingly, if a member leaves a District of Columbia affiliated group, its taxable income or loss for the remainder of the taxable year shall be reported on a separate short-year tax return or included in the consolidated tax return of its new District of Columbia affiliated group, where permissible under these rules.
- (b) District Taxable Income is computed as if a consolidated federal corporate income tax return was filed that included all Affiliates.
- (c) The following are computed on a consolidated basis as if all Affiliates were a single corporation filing a District corporate income tax return:
 - (1) District adjustments and allocation of business income;
 - (2) Apportionment: Intergroup Transactions are eliminated when computing apportionment factors (See 9 DCMR §§ 109.20);
 - (3) Net Operating Loss;
 - (4) District Taxable Income is computed on a consolidated basis;
 - (5) District Franchise Tax;
 - (6) District Tax Credits; and
 - (7) Election and Revocation in accordance with 9 DCMR §§ 109.4 and 109.6.

109.4 In order to file a District of Columbia consolidated return; the members of a District of Columbia affiliated group must be part of the affiliated group that files a federal consolidated return pursuant to §1501 of the IRC.

- (o) Ensure that each supervised apartment for wheelchair-bound clients is handicapped-accessible; and
- (p) Maintain a written staffing plan and provide a written staffing schedule for each site that services are provided.

993.10 Each person providing independent habilitation services pursuant to section 993.9 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (d) Have the ability to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Have a high school diploma or a general educational development (GED) certificate;
- (g) Have at least one (1) year of experience working with persons with developmental disabilities;
- (h) Complete training as required by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*) and any rules issued pursuant to the Act; and
- (j) Complete training in First Aid and CPR.

993.11 Each billable unit of service shall be one (1) hour.

993.12 The reimbursement rate shall be thirteen dollars and eighty cents (\$13.80) per billable hour and shall not exceed eight (8) hours per day Monday through Friday and sixteen (16) hours per day Saturday and Sunday, if the client resides in an supervised apartment. If the client resides in his or her

- (d) The "gross income derived from sources within the District" requirement in D.C. Official Code §47-1805.02(5)(D) is waived for a corporation that meets the following requirements:

- (1) A member of a regulated industry whose revenue is determined by means of a rate-setting procedure by a federal government agency, but only where the regulatory requirements to which the industry is subject impose restrictions on the structure of the affiliated group,
- (2) A member of an affiliated group as defined in §1502 of the IRC, and
- (3) In a trade or business in the District.

109.2 All members of a District of Columbia affiliated group must use the same accounting method and the same accounting period.

- (a) Unless otherwise provided by these rules or inconsistent with the provisions of the D.C. Official Code, the consolidated taxable income for a District of Columbia consolidated return year shall be determined in the same manner and under the same procedures, including intercompany adjustments and eliminations, as are required by the federal consolidated return regulations.
- (b) All intercompany transactions between and among members of a District of Columbia affiliated group will be eliminated in determining the District of Columbia apportionment factors.
- (c) An intercompany transaction is a transaction between corporations that are members of the same District of Columbia affiliated group immediately before and after the transaction.
- (d) Any deferred gain, loss or deduction from a prior transaction with a member of a District of Columbia affiliated group shall be recognized for District of Columbia purposes when the member subsequently ceases to be a member of that District of Columbia affiliated group or when the asset involved is transferred to a corporation which is not a member of District of Columbia affiliated group.
- (e) All supplementary and supporting schedules filed with a District of Columbia consolidated return shall be prepared in columnar form. One column being provided for each corporation included in the consolidated return, with the parent corporation information reported in the first column. Supporting schedules for the consolidated return shall also include a column for totals of like items before adjustments are made, a column for intercompany eliminations and adjustments, and a column for totals of like items after giving effect to the eliminations and adjustments.

own home or the home of an unpaid caregiver, reimbursement shall be limited to eight (8) hours per day.

- 993.13 Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the client. There shall be face-to-face contact between the client and the provider to bill for the service.
- 993.14 Nursing services attributable to the administration of medication when a client is unable to self-administer or take medication independently shall not be billed as a Waiver service.
- 993.15 Reimbursement for independent habilitation services shall not include:
- (a) Room and board costs;
 - (b) Protective oversight costs;
 - (c) Routine care and general supervision that would be expected to be provided by the family or the provider;
 - (d) Overhead or administrative costs;
 - (e) Building maintenance costs;
 - (f) Household supplies, including towels and linens; or
 - (g) Services or costs for which payment is made by a source other than Medicaid.
- 993.16 Independent habilitation services shall not be billed concurrently as:
- (a) Attendant care;
 - (b) Homemaker, except when the client is living in his or her own home;
 - (c) Personal Care;
 - (d) Day Habilitation;
 - (e) Supportive Employment;
 - (f) Pre-vocational;
 - (g) Chore, except when the client is living in his or her own home;
 - (h) Residential habilitation services;
 - (i) Respite;
 - (j) Family Training; or
 - (k) Adult Companion.

993.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Office of Tax and Revenue

NOTICE OF FINAL RULEMAKING

The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 1-204.24c, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of his intent to adopt new Taxation Regulations. The final regulations will add a new Section 109 to Chapter 1 of Title 9 of the D.C. Municipal Regulations (DCMR).

The final regulations will delete present Section 109 of Chapter 1 of Title 9, District of Columbia Municipal Regulations Sections 109 through 109.5, substituting therefor Sections 109.1 through 109.99. **Notice of Proposed Rulemaking was published in the D.C. Register on September 27, 2002, at 49 DCR 8914.** These final rules will be effective upon publication of this notice in the *D.C. Register*.

The following new Section 109, **CONSOLIDATED RETURNS TAX REGULATIONS**, is added to Chapter 1 of Title 9 DCMR:

109 CONSOLIDATED TAX RETURNS

- 109.1 District of Columbia affiliated group means an "affiliated group" as defined in §1504 of the Internal Revenue Code of 1986, as amended (IRC). Generally, District of Columbia affiliated groups shall not include any corporation that does not have gross income derived from sources within the District and nexus to the District of Columbia. Members of an affiliated group that are exempt from District taxation cannot be included in the consolidated return.
- (a) District of Columbia affiliated group may not include any corporation, which is a Qualified High Technology Company as defined in D.C. Official Code § 47-1817.01(5)(A) (a QHTC) and those corporations, described in IRC § 1504(b). A QHTC may opt out of status under D.C. Official Code §47-1817.01(5)(A) and be eligible to be included in a District of Columbia affiliated group. See §109.40.
 - (b) If a Qualified High Technology Company that has not made an election under §109.40 ceases to be a Qualified High Technology Company, such corporation (and any successor of such corporation) may not be certified as a Qualified High Technology Company before the 61st month beginning after its first taxable year in which it ceased to be a Qualified High Technology Company. During this period, such corporation is not eligible to make an election under §109.40.
 - (c) Each member of a District of Columbia affiliated group shall be jointly and severally liable for the taxes, interest and penalties of the District of Columbia affiliated group. If a corporation is a member of the District of Columbia affiliated group for a part of the year, then the corporation shall be liable for the tax liability attributed to that portion of the year that the corporation was a member of the District of Columbia affiliated group.

Communicable disease—that term as set forth in section 201 of Title 22 of the District of Columbia Municipal Regulations.

Individual Habilitation Plan or IHP- that plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

Individual Support Plan or ISP- the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Supervised Apartment- A living arrangement located in the District of Columbia for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGGT 03-2, In the Matter of the Application of the Washington Gas Light Company for
Authority to Amend Gas Tariff Provisions

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its final rulemaking action taken on January 29, 2004, in Order No. 13055, approving the Application of the Washington Gas Light Company ("WGL" or "the Company")² to amend the following tariff pages:

GAS TARIFF, P.S.C. of D.C. No. 3
Tenth Revised Page No. 27A
Third Revised Page No. 27F

2. On September 5, 2003, WGL filed an application to modify Rate Schedule No. 5 by moving credit language from the individual supplier agreements to the Company's tariff. Under the revised tariff, the Company will assess existing suppliers based on the three factors -- volume, price, and time. The Company will assess new suppliers to the delivery service program a security amount of \$5,000 if joining the delivery service program in the summer months or \$10,000 if joining the Program in the winter months.

3. A Notice of Proposed Rulemaking ("NOPR") for WGL's Application was published in the *D.C. Register* on October 17, 2003.³ No comments were filed in response to the NOPR. The Commission, in Order No. 13055, approved WGL's Application effective upon publication of this Notice of Final Rulemaking.

¹ D.C. Code, 2001 Ed. § 2-505.

² *Gas Tariff 03-2, In the Matter of the Application of the Washington Gas Light Company for Authority to Amend Gas Tariff Provisions*, Letter from Bernice K. McIntyre, Senior Counsel, Washington Gas Light Company ("WGL"), to Sanford M. Speight, Esq., Acting Commission Secretary, Public Service Commission of the District of Columbia, filed Sept. 5, 2003.

³ 49 *D.C. Reg.* 8901-2 (2003).

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of an amendment to Chapter 12 of Title 30 DCMR, "Lottery and Charitable Games". No substantive changes have been made to the text of the proposed rule published in the D.C. Register on December 19, 2003 at 50 DCR 10828. The final rule will be effective upon publication of this notice in the D.C. Register.

**AMEND CHAPTER 12, "BINGO, RAFFLES, MONTE CARLO NIGHT PARTY
AND SUPPLIERS' LICENSES"**

Amend Chapter 12 by deleting § 1210.2 in its entirety and replace with the following:

1210.2 [RESERVED]

disconnect its meter. Moreover, the tariff filing relieves WGL's responsibility for lost data with respect to the PID and gives WGL the right to approve contractors that install the connections to the PID and disconnect any connection not installed by an approved contractor, without liability.

4. A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 12, 2003.⁵ The Office of People's Counsel filed its comments on October 14, 2003.⁶ The Commission approved WGL's Application by Order No. 13056. WGL's tariff amendment will become effective upon the date of publication of the Notice of Final Rulemaking in the *D.C. Register*.

⁵ 51 D.C. Reg. 7767 (September 12, 2003).

⁶ *Formal Case No. GT03-1, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its General Service Provisions*, Letter to Sanford M. Speight, Acting Commission Secretary, from Barbara L. Burton, Assistant People's Counsel, filed October 14, 2003.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005**

NOTICE OF FINAL RULEMAKING

**FORMAL CASE NO. GT03-1, IN THE MATTER OF THE APPLICATION
OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND
ITS GENERAL SERVICE PROVISIONS**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its final rulemaking action taken in the above-captioned proceeding. On January 30, 2004, the Commission released Order No. 13056, approving the Application of Washington Gas Light Company ("WGL" or the "Company") to amend the following tariff pages:²

**GENERAL SERVICES PROVISION, P.S.C. of D.C. No. 3
Installation of Meter Pulse Equipment No. 24
10th Revised Page No. 1
3rd Revised Page No. 58
4th Revised Page No. 59**

2. On July 31, 2003, WGL filed its Application to establish the terms upon which third parties may be allowed to connect their meter pulse collection equipment to the Company's meter.³ WGL's proposed provisions set the conditions for the connection to a pulse initiation device ("PID") to assure that WGL's meter will not be harmed or the collection of usage data by the Company is not impaired by the installation or operation of the customer's data collection system.⁴ The tariff filing also establishes the rate a party must pay to attach a data collection system to the PID. The tariff provides that ownership of the meter remains with WGL and that WGL's meter will govern the determination of gas usage for billing purposes.

3. In addition, the proposed tariff places responsibility on the customer to reconnect service to the PID should the Company need to interrupt service to maintain or

¹ D. C. Code, 2001 Ed. § 2-505.

² *Formal Case No. GT03-1, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its General Service Provisions*, Letter to Sanford M. Speight, Acting Commission Secretary, from Bernice K. McIntyre, Senior Counsel for Washington Gas Light Company, re: Formal Case No. GT03-1, filed July 31, 2003 (hereinafter referred to as "Application").

³ Application at 1.

⁴ *Id.*